Supreme Court of the United States.

No. 231.

OLD DOMINION STEAMSHIP COMPANY

v.

COMMONWEALTH OF VIRGINIA.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

BRIEF FOR PLAINTIFF IN ERROR.

THE QUESTION INVOLVED.

CAN THE STATE OF VIRGINIA CONSISTENTLY WITH ARTICLE I, SECTION 8, CLAUSE 3, OF THE CONSTITUTION OF THE UNITED STATES AND THE ACTS OF CONGRESS PURSUANT THERETO LAWFULLY TAX VESSELS OWNED BY NON-RESIDENT CITIZENS, DULY ENROLLED UNDER THE NAVIGATION LAWS OF THE UNITED STATES LICENSED FOR AND ENGAGED IN THE COASTWISE TRADE?

HISTORY OF THE CASE.

Under recent legislation it is made the duty of every corporation, foreign and domestic, doing business in Virginia

to report to the State Corporation Commission its property for taxation.

Accordingly the Old Dominion Steamship Company, the plaintiff in error, made report of all its property liable to taxation by said Commission.

It declined to report certain of its vessels, namely the steamers *Hampton*, *Mobjack*, *Hampton Roads*, *Luray*, *Accomac*, *Virginia Dare*, *Brandon* and *Berkley*, because these steamers belonged to the plaintiff in error, a non-resident of Virginia, all of which were regularly enrolled outside of that State and duly licensed for the coastwise trade and lawfully engaged in such trade upon the navigable waters of the United States and were only liable to taxation at their home port.

Notwithstanding this the State Corporation Commission on the 2d day of September, 1903, insisted that the plaintiff in error should send it a list of the said vessels, which it proceeded to do under protest on the 10th day of September, 1903, accompanied with the request, however, that a day be fixed for a hearing. (See correspondence in certified facts, pages 9–10 of record.)

Accordingly, the 17th day of September, 1903, was designated for such hearing and such proceedings were then had that on the day of November, 1903, the said Commission entered an order declaring all the said vessels taxable by the State of Virginia except the steamer Hampton (that steamer being at the time under charter in New York) and proceeded to assess the same for taxation by the said State and also proceeded to locate certain of said vessels for taxation by the cities of Richmond and Norfolk and the

towns of Smithfield and Suffolk and the Hampton School District of Elizabeth City County, all of which will appear by reference to the facts certified by the Honorable Beverly T. Crump, Chairman of the said State Corporation Commission, and found at pages 9–15 of the record.

From this order an appeal was taken to the Supreme Court of Appeals of Virginia, where such proceedings were had and taken as resulted in an order by that tribunal on March 17th, 1904, affirming the action of the State Corporation Commission in the following language:

> "And the court having maturely considered said transcript of the record of the finding aforesaid and the arguments of counsel, is of opinion that the legal *situs* of the vessels and barges assessed for taxation by the finding of the State corporation commission is, for that purpose, within the jurisdiction of the State of Virginia and that said property is amenable to the tax imposed thereon—notwithstanding the fact that said vessels and barges are owned by a non-resident corporation, that they may have been enrolled under the act of Congress at some port outside the State of Virginia, and that they are engaged, in part, in interstate commerce—and doth so decide and declare. Therefore it seems to the court here that the finding of the State corporation commission appealed from is without error, and said finding is approved and affirmed."

Whereupon a writ of error was obtained to this Honorable Court upon

ASSIGNMENTS OF ERROR

as follows:

> "The supreme court of appeals of Virginia

erred in affirming the finding of the State corporation commission of Virginia, that the vessels of the plaintiff were taxable by the State of Virginia and assessing the same for such taxation. And in holding such assessment of the plaintiff's vessels not to be in conflict with the Constitution of the United States, and of laws made in pursuance thereof.

The validity of the said finding of said commission and taxation of said vessels was controverted and drawn in question by the plaintiff in error on the ground of the same being repugnant to the Constitution of the United States and to laws of Congress made in pursuance thereof, and in contravention thereof, in the following particulars:

First: The supreme court of appeals erred in affirming the finding of the State corporation commission and in holding that the legal *situs* of the vessel property of the Old Dominion Steamship Company in the proceedings mentioned and assessed for taxation by the said commission was for that purpose within the State of Virginia, and amenable to the tax imposed thereon, notwithstanding said vessels were owned by the plaintiff, a corporation of the State of Delaware and a citizen of the United States, and duly enrolled outside of the State of Virginia pursuant to the acts of Congress, licensed for the coasting trade, and engaged in interstate commerce, which holding and decision are in violation of sections 4131, 4141, 4311 and 4312 of the Revised Statutes of the United States.

Second: The said final judgment and decision of the said Supreme Court of Appeals is erroneous in not holding the said taxation of the vessels of the plaintiff in error, to be a regulation of interstate commerce by the State of Virginia, in violation of, and repugnant to, article I, section 8, clause 3, of the Constitution of the United States, which gives to Congress the power to regulate commerce among

the several States and with the Indian Tribes."

THE FACTS.

Under the Constitution of Virginia (Article XII, section 156, sub-section f), the State Corporation Commission is required to "certify to the Appellate Court all the facts upon which the action appealed from was based and which may be essential for the proper decision of the appeal."

The facts certified in this case will be found on pages 9-15 of the record and are in part as follows:

> "On which hearing the following facts were adduced before the said commission, namely: That the Old Dominion Steamship Company was a non-resident corporation, having been incorporated by the senate and house of representatives of the State of Delaware; that it was then and had been for many years theretofore engaged in the transportation of passengers and freight on the Atlantic ocean and communicating navigable waters, between the city of New York in the State of New York and Norfolk and certain other ports within the State of Virginia. That said steamship company in the prosecution of its said transportation business owned and operated the vessel property above named, that these vessels with the exception of the tug Germania whose movements and use will be hereinafter stated, visited various ports or points within the State of Virginia, for the purpose of receiving freight and passengers, for which they issued bills of lading and tickets to points outside of the State of Virginia: that owing to the shallow waters where these vessels plied it was impossible in most instances for the larger ocean going steamers of the company to be used: that in consequence the vessels above enumerated were used to receive the freight and passengers as aforesaid, giving the

shipper of freight a bill of lading for the same destined to New York and other points outside of Virginia, and the passenger a ticket to his destination, and thus transported such freight and passengers to deeper water at Norfolk and Old Point Comfort where, upon such bills of lading and tickets, the passengers and freight were transferred to one of the larger ocean going vessels of the steamship company, and so the ultimate destination, namely New York and elsewhere outside of Virginia was reached; that any other business transacted by the above named vessels was incidental in character and comparatively insignificant in amount; that the said vessels were built and designed for interstate traffic especially, and were adjuncts to or branches of the main line of the Old Dominion Steamship Company between New York and Norfolk; that each and all of the said vessels were regularly enrolled, under the United States laws, outside of the State of Virginia with the name and port of such enrollment painted on the stern of each of them; that the said vessels though regularly enrolled and licensed for coatwise trade were then used on old established routes upon navigable waters within Virginia as follows, to-wit:"

The certificate of facts proceeds with the name of the vessels hereinbefore set out and their respective routes, following with some special facts concerning the Berkley and the Brandon, namely that one of them was constructed at Richmond, Va., in the year 1902 and both fitted up for passenger as well as freight traffic and that a retail liquor business was conducted on these two steamers under a license obtained from the Virginia State authorities as well as under a similar license obtained from the United States Revenue authorities.

ARGUMENT.

The plaintiff in error insists that the said vessels being owned by a non-resident and regularly enrolled under the laws of the United States and engaged in commerce upon the navagable waters of the country were not and are not taxable by the State of Virginia or elsewhere than at their *home port.*

It further insists that the action of the State Corporation Commission of Virginia affirmed by the Supreme Court of Appeals of that State is for the reasons set out in the foregoing assignments of error erroneous and should be reversed.

Vessels such as those involved in this proceeding are by congressional legislation peculiarly and especially the subject of Federal law and regulation.

Section 4141, United States Revised Statutes provides as follows:

> "Sec. 4141. Every vessel, except as is hereinafter provided, shall be registered by the collector of that collection district which includes the port to which such vessel shall belong at the time of her registry; which port shall be deemed to be that at or nearest to which the owner, if there be but one, or if more than one, the husband or acting and managing owner of such vessel, usually resides."

Should the vessels belong to a corporation then the enrollment and license may be issued in the name of the president or secretary of the company, which officer to that extent is dealt with as the owner or managing owner. See U. S. Rev. Statutes as follows:

"Sec. 4313. Enrollments and licenses for vessels owned by any incorporated company may be issued in the name of the president or secretary of such company; and such enrollments or licenses shall not be vacated or affected by any sale of shares of stock in such company.

"Sec. 4314. Previously to granting enrollment and license for any vessel, owned by any company, the president or secretary of such company shall swear to the ownership of such vessel, by such company, without designating the names of the persons composing such company; which oath shall be deemed sufficient, without requiring the oath of any other person interested or concerned in such vessel.

"Sec. 4315. Upon the death, removal, or resignation of the president or secretary of any incorporated company owning any (steamboat or) vessel, a new enrollment and license shall be taken out for such steamboat or vessel."

Vessels engaged in the coastwise trade or on other navigable waters of the United States are, by sections forty three hundred and eleven (4311) and forty three hundred and twelve (4312), United States Revised Statutes, *enrolled* as distinguished from those engaged in foreign trade, which by section forty one hundred and forty one (4141) are *registered*. The qualifications as to the ownership and place of enrollment are the same as in case of registration.

Vessels enrolled under this provision become vessels of the United States.

"Ships or vessels of ten or more tons burden, duly enrolled and licensed, if engaged in commerce on waters which are navigable by such vesseis from the sea, are ships and vessels of the United States,

entitled to the privileges secured to such vessels by the act for enrolling and licensing ships or vessels to be employed in the coasting trade. 1 Stat. 205, 287."

Transportation Co. vs. Wheeling, 99 U. S. 278.

The place of enrollment so provided by this act is in law the "home port" of the vessel. Owing to the fugitive character of such property, possessed of the power to move at the will of its master anywhere on the navigable waters of the country, and designed for trade wherever the same may be found profitable anywhere upon the broad waters of the United States or elsewhere on the water highways of the world, it became pre-eminently necessary that some particular abiding place should be fixed and declared by law for them. Accordingly Congress has declared that the permanent abiding place of United States vessels shall be the port of enrollment, the port nearest the residence of the owner or managing owner, and if a Corporation be the owner then at the port nearest the residence of the President or Secretary. Certain characteristics or qualities have been imparted to these vessels by Federal legislation and the admiralty rules of the civilized world. Such, for example, as giving those who furnish them with supplies in any other than their "home port" a lien on such vessels for such supplies, and again, giving to her master power when she is overtaken by any particular stress of placing a lien upon her which shall be prior to all others, namely, a bottomry bond. Again, we find such property the particular source of national solicitude in the laws enacted by Congress and known as the "Limited Liability Act." Congress recogniz-

ing the need of building up a merchant marine, but equally appreciating the dangers to which vessels are exposed by reason of their being obliged in the course of their business to visit foreign waters and jurisdictions and become exposed to the dangers of the sea and river navigation, with a view of encouraging the investment of capital in such property, has declared, that the liability of the owners of such vessels for the negligence, etc., of their masters shall be limited to the value of the interest of such owner. In a word United States vessels differ in many essential and material respects from all other personal property, and the rules with reference to the taxation of personal property on land are not a guide to the taxation of ships. If ships could be taxed at any port where they habitually call or where they may trade great uncertainties would arise and injustice result. Hence the Supreme Court of the United States has uniformly held that because of their peculiar nature and employment and because Congress has fixed their "home port" they cannot be taxed as of their actual *situs* but only at their "home port."

Justice Brewer, in the *Pullman Palace Car Company vs. Twombly, 29 Fed. 658, 665*, speaking of the difference between other tangible property and vessel property, said as follows:

> "The place where a vessel is registered is by law its home port. That is considered its *situs* * * * * An attempt is made to place commerce by land in the same position as commerce by water, and to make in the former case the domicile of the owner equivalent to the port of registry in

> the latter. But until there has been some legislative declaration of equivalent import the obvious distinction between the two must be enforced and the ordinary rule of the *situs* of tangible property for purpose of taxation be applied to vehicles used in commerce on land."

This distinction is made plainer, if possible, by the expression of the Court in *Railroad Co. v. Maryland, 21 Wall. 456.* At page 470 of the report, Judge Bradley says:

> "Commerce on land between the different States is so strikingly dissimilar, in many respects, from commerce on water, that it is often difficult to regard them in the same aspect in reference to the respective constitutional powers and duties of the State and Federal governments. No doubt commerce by water was principally in the minds of those who framed and adopted the Constitution, although both its language and spirit embrace commerce by land as well. Maritime transportation requires no artificial roadway. Nature has prepared to hand that portion of the instrumentality employed. The navigable waters of the earth are recognized public highways of trade and intercourse. No franchise is needed to enable the navigator to use them. Again, the vehicles of commerce by water being instruments of intercommunication with other nations, the regulation of them is assumed by the National legislature. So that State interference with transportation by water, and especially by sea, is at once clearly marked and distinctly discernible. But it is different with transportation by land."

In *Hayes vs. Pacific Mail Steamship Company, 17 Howard 596*, an effort was made by the State of California to tax certain vessels belonging to the Pacific Mail Steam-

ship Company, a corporation duly chartered in the State of New York, where the said vessels were owned and registered. The vessels in this case plied between New York and San Francisco, and between the latter port and certain ports in Oregon.

Mr. Justice Nelson delivering the opinion of the court, after citing the registry acts of the United States above quoted, proceeds as follows:

> "These provisions, and others that might be referred to, very clearly indicate that the domicile of a vessel that requires to be registered, if we may so speak, or home port, is the port at which she is registered, and which must be the nearest to the place where the owner or owners reside. In this case, therefore, the home port of the vessels of the plaintiffs was the port of New York where they were duly registered and where all the individual owners are resident and where is also the principal place of business of the company, and where, it is admitted, the capital invested is subject to State, county and other local taxes.
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> "These ships are engaged in the transportation of passengers, merchandise, &c., between the city of New York and San Francisco by the way of Panama and between San Francisco and different ports in the Territory of Oregon.
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> "They are thus engaged in the business and commerce of the country, upon the highway of nations, touching at such ports and places as these great interests demand and which hold out to the owners sufficient inducements, by the profits realized or expected to be realized. And so far as respects the ports and harbors within the United States they are entered and cargoes discharged or laden on board independently of any control over

them, except as it respects municipal and sanitary regulations of the local authorities such as are not inconsistent with the constitution and laws of the General Government, to which belongs the regulation of commerce with foreign nations and between the States.

"Now it is quite apparent that if the State of California possessed the authority to impose the tax in question, any other State in the Union into the ports of which the vessels entered in the prosecution of their trade and business might also impose a like tax. It may be that the course of trade or other circumstances might not occasion so great a delay in other ports on the Pacific as at the port of San Francisco. But this is a matter accidental, depending upon the amount of business to be transacted at the particular port, the nature of it, necessary repairs, &c.. which in no respect can affect the question as to the *situs* of the property in view of the right of taxation by the State.

"Besides, whether the vessel leaving her home port for trade and commerce visits in the course of her voyage or business several ports or confines her operations in the carrying trade to one, are questions that will depend upon the profitable returns of the business, and will furnish no more evidence that she has become a part of the personal property within the State, and liable to taxation at one port than at the others. She is within the jurisdiction of all or any one of them, temporarily, and for a purpose wholly excluding the idea of permanently abiding in the State, or changing her home port. Our merchant vessels are not unfrequently absent for years in the foreign carrying trade seeking cargo, carrying and unloading it from port to port during all the time absent; but they neither lose their national character nor their home port as inscribed upon their stern.

"The distinction between a vessel in her home

port and when lying at a foreign one, or in the port of another State, is familiar in the admiralty law. She is subjected in many cases, to the application of a different set of principles. 7 Pet. 324; 4 Wheat. 488.

"We are satisfied that the State of California had no jurisdiction over these vessels, for the purpose of taxation; they were not, properly abiding within the limits so as to become incorporated with the other personal property of this State; they were there but temporarily, engaged in lawful trade and commerce, with their *situs* at the home port, where the vessels belonged, and where the owners were liable to be taxed for the capital invested, and where the taxes had been paid."

The steamboat property of the Old Dominion Steamship Company, operated as above described, in the certificate of facts, is as clearly engaged in the business and commerce of the country upon its highways as in the case just quoted from. These vessels are neither owned by citizens or residents of the State of Virginia, nor enrolled or registered in that State.

The record in this case does not show whether these vessels were actually taxed at their home port or not.

It matters not whether they are actually so taxed by the State where they are enrolled. They are *liable* to taxation there and that answers the law.

This was expressly held in Morgan v. Parham, 16 Wall. 471. The court says in the case where the State of Alabama was attempting to tax the vessel property of a citizen of New York and registered in New York as follows:

"Whether the steamer "Frances" was actually

> in New York during the year 1866 and 1867 is not shown by the case. It is not important. She was liable to taxation there. That State alone had dominion over her for that purpose. Alabama had no more power to tax her or her owner than had Louisiana, or than Florida, Georgia and South Carolina would have had in the case, I have supposed."

The Supreme Court of the State of Michigan has expressly upheld the doctrine contended for by the Old Dominion Steamship Company.

In *Roberts vs. Charlevoix Twp.*, 60 Mich. 192, Campbell J., said for the court that a vessel owned by a non-resident and registered under the United States navigation laws does not, by engaging in business within the State become subject to its taxing power, and ends the discussion by saying:

> "This doctrine having been settled by the court of last resort there would be no propriety in discussing it."

The Supreme Court of the State of Florida has with equal emphasis announced the same doctrine.

In *Johnson vs. De Bary-Baya Merchants Line*, 37th Fla. 499, the court says:

> "The vessels were owned by a New York corporation and had acquired a *situs* in that State by being registered in the port of New York, the nearest to the residence of the owner, and were engaged in commerce in that State where it is conceded, the most profitable employment could be procured for them. The mere fact of being employed in interstate commerce would not exempt

them from taxation, and we do not say that registration in a foreign port and non-resident ownership should control absolutely, but such ownership and registration render them primarily and presumptively taxable only in their home port. This is clearly the doctrine of the Supreme Court of the United States—the court of last resort in such a case.

The boats of the non-resident corporation were used in the very business for which they were constructed, and they were in Florida waters because they could be more profitably employed there. Some of them were transferred to other fields as profit dictated, and it does not appear that they all might not have been taken away at any time if it had been to the interest of the owner to move them."

The vessels in this case were used in trading on the St. John's river, and as adjuncts to the Clyde Line, a transportation company engaged in coastwise traffic between Florida and New York. The court in this case speaking further on the subject says:

" All property should in justice pay its proportionate part of tax burdens in return for protection given: but one State should not lay taxes upon citizens of other States unless their property has acquired a *situs* in the taxing locality so as to become a part of the property there situated.

* * * * * * * *

The character of such property is such as to give rise to the just rule under the United States registry acts that it is primarily taxable only at the home port where the owner resides."

The plaintiff in error respectfully insists that its said vessels are only taxable at their "home port."

If it were otherwise then said vessels would be subject to taxation not only at their home port, but also wherever *they might happen to be employed in trade upon the navi*gable waters of any of the States of the Union.

It was to avoid this injustice among other things that the wise, if somewhat arbitrary, rule was adopted by the United States in fixing the *home*, the permanent abiding place, of such vessels, at the port of enrollment.

The cases cited are conclusive unless the length of time which such vessels remain in the waters of another State may affect them. This is practically conceded so far as such vessels may be *temporarily* within Virginia waters.

Clearly the principle exempting such vessels from taxation should not be affected by the length of time they may remain away from their home port trading in the waters of another State. They are available only for use on the navigable waters of the country and liable to go and come as profit or the demands of trade may suggest. Therefore, they cannot be said to abide in any place *permanently*, save and except at the place fixed by law as their "home port." They can have but one "home port," and so long as that lasts just so long must such vessels be taxed there. The only way the "home port" can be changed is that prescribed by the navigation laws of the United States. See U. S. Revised Statutes, sections 4141, 4312, 4159 and 4329.

The allusion in some of the cases to the temporary visits of such non-resident vessels as the course of trade may require, cannot be construed to mean that such vessels ply-

ing on regular routes upon the navigable waters of the State lose thereby their legal situs. These temporary visits are inseparable from vessel property, and the trade which they alone can and do conduct.

Such allusions cannot be taken literally, but must be referred to the fugitive character of vessels.

In the "Frances" case, 16 Wall. 471, although the "Frances" there sought to be taxed had been trading on the same route for five years, Judge Hunt, page 479, says:

> "It is in law as if the vessel had never before or after that day been within the port of Mobile, but touching there on a single occasion when engaged in the interstate trade, has been subjected to a tax as personal property of that city."

Assuming for the purpose of argument, that it is possible, in view of the character of United States vessels, to say they can abide permanently elsewhere, than at the home port, the facts certified in this case show that the vessels of the Old Dominion Steamship Company were not so *permanently abiding* in Virginia as to become blended with the mass of the property within that State so as to be exposed to the same rules governing taxation as those which apply to property on land.

It will be seen by reference to the certified facts (record p. 11) that the Old Dominion Steamship Company "was then and had been for many years theretofore engaged in the transportation of passengers and freight on the Atlantic Ocean and communicating navigable waters between the city of New York in the State of New York and Norfolk and certain other ports within the State of Virginia." That

these vessels "were used to receive the freight and passengers . . . giving the shipper of freight a bill of lading for the same destined to New York and other points outside of Virginia, and the passenger a ticket to his destination, and thus transported such freight and passengers to deeper water at Norfolk and Old Point Comfort where, upon such bills of lading and tickets, the passengers and freight were transferred to one of the larger ocean going vessels of the steamship company, and so the ultimate destination, namely, New York and elsewhere outside of Virginia was reached; that any other business transacted by the above named vessels was incidental in character and comparatively insignificant in amount; that the said vessels were built and designed for inter-state traffic especially and were adjuncts to or branches of the main line of the Old Dominion Steamship Company between New York and Norfolk." While it is true that these vessels "were then used on old established routes upon navigable waters within Virginia," it is also true that they were "regularly enrolled, under the United States laws, outside of the State of Virginia, with the name and port of such enrollment painted on the stern of each of them" and were constructed, designed and regularly licensed for the coastwise trade.

It is apparent that though the route was an old established route, that these vessels like all other vessels, were liable to go at any moment wherever trade demands might make it more profitable for them to go, and in fact, one of them, the Hampton, was at the time omitted by the State Corporation Commission, because she was under charter in other waters in New York.

In a word, while the route was an old established route, it does not appear, and as a matter of fact it is not true, that these same vessels do always run on that route, or would always run on that route. They were liable to be substituted by others at any time and to go elsewhere. This inevitable, fugitive, bird-like quality of these vessels, and all such craft, made it impossible for them to be and abide permanently within the jurisdiction and under the protection of the laws of Virginia. In the very nature of this property no protection could be afforded them by the laws of Virginia. Jurisdiction over them was and is in the Federal and Admiralty Courts. So far from their being under the protection of the Virginia laws, these very laws declare and regard them as non-residents, and therefore liable to the citizens of Virginia by proceedings *in rem* for any debts or other obligations which might be due from them to such citizens. Liens against them recorded under State law were and are of no avail unless also recorded in the U. S. Custom House where they are enrolled.

We respectfully submit that our contention is supported by the authorities cited, and especially by that broad policy of our National Government which has seen fit to declare that vessels duly enrolled shall everywhere and under all circumstances be treated and dealt with for purposes of taxation and all other purposes only by the State having jurisdiction over such "home port." Any other policy would be productive of the greatest injustice, since it would permit the authorities having jurisdiction over the "home port" to tax such vessels because their legal situs was within its borders, and yet would permit any other and every other

State upon whose waters such vessels might be found trading, to put a further and additional tax upon them.

If the principle contended for by the Commonwealth in this case is conceded it would follow that while she could equally tax the vessel property of her own citizens, she could equally tax the vessel property of the citizens of any of the other states, which might be found in her waters, and likewise expose the vessel property of her own citizens to be taxed by the other States in whose waters they might be found trading. The confusion and injustice following such a condition is more than an ample justification of the principle which permits such property to be taxable only at its legal situs or "home port" and not anywhere it may be actually found trading in the waters of any State of this Union.

If the right of taxing vessels is to be determined by the length of time they may remain within the waters of any particular State, who is to determine what that length of time shall be?

Shall the State authorities say that all such vessels as may be found within her borders on the first day of the current tax year shall be so taxable?

Shall they say that all such vessels as shall remain within her borders three months, six months, nine months, twelve months, or for any other period arbitrarily determined? One of the States might prescribe one period and one another, and so confusion and injustice would be inevitable.

We submit that upon the authorities cited the principle for which we contend is the only one having those qualities

of justice, equity and stability, which the nature of vessel property demands and which can alone satisfy the national policy manifested in the legislation of Congress. It would be an interference with national commerce forbidden by the Federal Constitution.

The plaintiff in error further submits that the action of the said Corporation Commission affirmed by the Supreme Court of Appeals of that State, holding the said vessels liable to taxation by the State of Virginia is a regulation of interstate commerce by that State, in violation of and repugnant to Article 1, section 8, clause 3 of the Constitution of the United States, which gives to Congress the power to regulate commerce with foreign nations, among the several States and with the Indian tribes, and also in violation of sections 4131, 4141, 4311, and 4312 of the Revised Statutes of the United States.

Wherefore the plaintiff in error respectfully insists that this Honorable Court shall review and reverse the said order and finding of the Supreme Court of Appeals of Virginia, and enter such an order as may be just and right.

Respectfully submitted,

WM. H. WHITE,

Counsel for Plaintiff in Error.